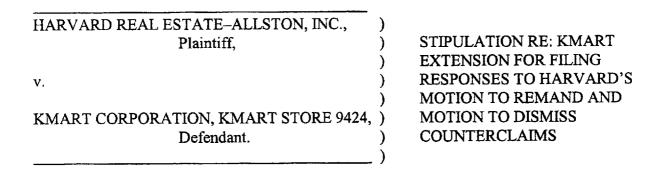
UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

Civil Action No. 04-CV-12249-DPW



The Plaintiff, Harvard Real Estate-Allston, Inc. ("Harvard"), and the Defendant, Kmart Corporation, Kmart Store 9424 ("Kmart"), by their attorneys, hereby stipulate and agree to the following:

- Kmart shall have until and including December 14, 2004 to file a Response to 1. Harvard's Motion to Remand and a Response to Harvard's Motion to Dismiss Counterclaims;
- Kmart shall assent to Harvard's Motion for Leave to File Reply Brief to Kmart's 2. Response to Harvard's Motion to Remand and Kmart's Response to Harvard's Motion to Dismiss Counterclaims;
- If the Court allows Harvard's Motion for Leave to File Reply Brief to Kmart's 3.

Responses pursuant to Paragraph 2, Harvard will assent to Kmart's Motion for Leave to File Surreply to Harvard's Reply Brief.

Respectfully submitted,

Plaintiff,

Harvard Real Estate Allston-Inc.

By its attorneys,

Frank A. Flynn, Esq. (BBO# 551668)

Randolph C. English, Esq. (BBO# 628647)

Downing & Flynn

85 Devonshire Street, Suite 1000

DATED: December 13, 2004

Boston, MA 02109

(617) 720-3535

By Telephonic Assent:

Defendant,

Kmart Corporation, Kmart Store 9424

By its attorneys,

William R. Moorman, Jr., Esq. (BBO#548593)

Kathleen A. Rahbany, Esq. (BBO# 654322)

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